

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

TODD MCELROY,

Plaintiff,

v.

U.S. DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA;
MAGISTRATE JUDGE G. R. SMITH;
DISTRICT JUDGE WILLIAM T. MOORE,
JR.; and U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Defendants.

CIVIL ACTION NO.: 4:21-cv-196

ORDER

After a careful *de novo* review of the entire record, the Court concurs with the Magistrate Judge's July 12, 2021, Report and Recommendation, (doc. 5), to which plaintiff has filed objections, (docs. 7 & 8). The Magistrate Judge recommended that the case be dismissed because it is untimely and all of the named defendants are immune from this variety of civil suit. (Doc. 5). For the following reasons, the objections are **OVERRULED**, and the Report and Recommendation is **ADOPTED** as the opinion of the Court.

Plaintiff's objections do not address the immunity of the defendants. (See, docs. 7 & 8). He instead argues only that the applicable statute of limitations for his claims should be that applicable to claims under the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act, O.C.G.A. § 16-14-1, et al., which provides that claims may be brought up to five years after the alleged wrongdoing concludes. (Doc. 8 (citing O.C.G.A. § 16-14-8)). The Complaint does not allege that the defendants engaged in conduct prohibited by the Georgia RICO Act, but rather

that they misapplied the law in deciding an employment discrimination case. (See, doc. 1; see also, O.C.G.A. § 16-14-4 (providing the acts prohibited by the Georgia RICO Act)). Even if such a claim were presented, its inclusion would not alter the two-year statute of limitations applicable to *Bivens* claims. Uboh v. Reno, 141 F.3d 1000, 1002 (11th Cir. 1998) (establishing the statute of limitations for *Bivens* claims as that applicable to personal-injury torts under state law); see also, O.C.G.A. § 9-3-33 (establishing a two-year statute of limitations for personal-injury claims).

Therefore, as all defendants are immune from suit and the Complaint is untimely, plaintiff's objections are **OVERRULED** and the Report and Recommendation is **ADOPTED** as the opinion of the Court. (Doc. 5). Plaintiff's Complaint is **DISMISSED**. The Clerk of Court is **DIRECTED** to **CLOSE** this case.

SO ORDERED, this 5th day of August, 2021.



R. STAN BAKER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA